

What's New - September 2011

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1. WIN A FREE REGISTRATION TO THE 2012 NATIVE TITLE CONFERENCE!

Just take 5 minutes to complete our publications survey and you will be in the draw to win a free registration to the 2012 Native Title Conference. Those who have already completed the survey will be automatically included. If you have any questions or concerns, please contact Matthew O'Rourke at the Native Title Research Unit on (02) 6246 1158 or morourke@aiatsis.gov.au.

[CLICK HERE TO COMPLETE SURVEY](#)

2. Cases

Dunghutti Elders Council (Aboriginal Corporation) RNTBC v Registrar of Aboriginal and Torres Strait Islander Corporations (No 3) [2011] FCA 1019

25 August 2011

Federal Court of Australia, Sydney NSW

Keane CJ, Lander and Foster JJ

Dunghutti Elders Council had challenged the validity of a notice issued by the Registrar of Aboriginal and Torres Strait Islander Corporations (now known as the registrar of Indigenous Corporations), which had required the Council to 'show cause' why it should not be put under special administration. That challenge, heard by Flick J, was unsuccessful, and an appeal against Flick J's decision was dismissed by the Full Court. The Full Court ordered that this dismissal would not take effect for 3 weeks, and the Registrar undertook not to put the Council under special administration for that period. The Council has applied to the High Court for special leave to appeal against the Full Court's dismissal.

In the current judgment, by Foster J, the Council had applied for orders that would prevent the Full Court's dismissal from taking effect until the Council's application for special leave had been decided. The Council also applied for an injunction preventing the Registrar from putting it under special administration during that time. Foster J held that a stay of the Full Court's decision (which only had the effect of putting Flick J's orders back on track) was not the appropriate remedy to seek in any case, and concentrated on whether an injunction should be granted. His Honour considered that an injunction was not appropriate for the following reasons:

- The prospects of the High Court granting special leave to appeal are slim, since the Council's substantive arguments are weak and further the special leave application does not raise any point of general importance applicable beyond the facts of this single case.
- The grounds for the Registrar's original 'show cause' notice involve quite serious allegations, and there is a significant public interest in ensuring that the native title compensation funds paid to the Council are spent wisely and in the interests of the people for whose benefit they were to aid.
- There is an ongoing risk, if an injunction were granted, that the Council's assets will be further dissipated in litigation that will not benefit its members.

- His Honour did not consider the prospect of further damage to the reputation of the incumbent directors to be a matter of much weight in favour of an injunction when compared with these other matters.

Cashmere on behalf of the Jirrbal People 1 v State of Queensland [2010] FCA 1090

12 September 2011

Federal Court of Australia, Ravenshoe QLD

Dowsett J

In October 2010, Dowsett J made consent determinations recognising native title held by the Jirrbal people over land and waters in the vicinity of Herberton, Ravenshoe and Lake Koombaloo, to the south-east of Cairns. The determinations were conditional on the registration of certain Indigenous land use agreements, which were registered in February 2011. The reasons for his Honour's decision were published this month.

Dowsett J had read a summary of the applicants' connection report, as well as affidavits by members of the claim group, and referred to extensive genealogical material. All of this material clearly demonstrated a long-standing association between families in the claim group and the determination areas (and beyond), as well as evidence of a system of normative laws and customs observed and acknowledged by the Jirrbal people at least from the time of first contact with Europeans. His Honour was satisfied that there was continued acknowledgement and observance of the traditional laws and customs, and continued connection.

In relation to unallocated Crown land (not including water) in one of the applications, the determination recognised the rights to possession, occupation, use and enjoyment thereof, to the exclusion of all others, subject to certain qualifications. In relation to the balance of the claimed land, non-exclusive rights were recognised to be present on the land; to take and use traditional natural resources for personal, domestic and non-commercial communal purposes; to conduct ceremonies; to maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas, by lawful means, from physical harm; and to teach the physical and spiritual attributes of the land. In relation to waters, the non-exclusive rights were recognised to hunt, fish, and gather; and to take and use the water; for personal, domestic and non-commercial communal purposes. The native title is not to be held in trust, and Wabubadda Aboriginal Corporation will be the prescribed body corporate.

Weld Range Metals Limited/Western Australia/Ike Simpson and Others on behalf of Wajarri Yamatji, [2011] NNTTA 172

21 September 2011

National Native Title Tribunal, Perth WA

Hon CJ Sumner

This future act determination is a decision by the National Native Title Tribunal which prohibits the Western Australian government from granting four mining leases to Weld Range Metals Limited (WRML) in an area over which the Wajarri Yamatji people have made a native title application.

Under the *Native Title Act 1993* (Cth), applicants for mining leases must negotiate in good faith with any registered native title claimants or recognised native title holders in the proposed area of the mining lease. If an agreement is reached, then the leases may be granted on whatever conditions are agreed between the parties. If no agreement is reached within 6 months, then a party can apply to the Tribunal for an arbitral decision as to whether the leases may be granted or not, and (if the leases are to be granted) any conditions to which the grant will be subject. The Tribunal's decision must take into account certain considerations listed in the *Native Title Act 1993* (Cth), including the effect of the proposed acts on the native title parties; the interests, opinions and wishes of the native title parties; the economic or other significance of the proposed acts to various groups of stakeholders; and the public interest.

In this case, negotiations between WRML and the Wajarri Yamatji people did not result in any agreement, and so WRML applied to the Tribunal for a determination that the grant of the mining leases could go ahead. The Tribunal's Deputy President Christopher Sumner determined that the required negotiations in good faith had taken place, and so went on to consider whether the proposed acts should be allowed, and if so on what conditions. The Wajarri Yamatji representative argued that the leases should not be granted, or alternatively that they should be allowed only on certain conditions. WRML and the State government argued that the leases should be allowed without any further conditions, or alternatively they should be allowed on the conditions suggested by the State.

The Tribunal's decision-making process included an on-country hearing at sites in the Weld Range, and a town-hall hearing where evidence was given by members of the Wajarri Yamatji people, an anthropologist, an archaeologist, and WRML's Chief Geologist and Managing Director. The Tribunal found on the evidence that the area to be affected by the proposed leases is connected to a number of important Dreaming stories, is historically an area of intense occupation and ceremony, and contains a number of highly significant sites including quarries, rock holes, grinding stones and caves with rock art. WRML's and the State's evidence related mainly to the economic benefits and public interest in the mining projects going ahead. Deputy President Sumner decided that the Weld Range area is of such significance to the Wajarri Yamatji people in accordance with their traditions that mining in that area should only be allowed with their agreement. Accordingly, he determined that the proposed mining leases must not be granted. This decision does not prevent the Wajarri Yamatji people from continuing to negotiate with WRML if they choose, but does allow them the final say over the proposal. To date no appeal has been filed by WRML.

3. Legislation & Policy

Native Title Amendment (Reform) Bill 2011

On 12 May 2011 the inquiry into the Native Title Amendment (Reform) Bill 2011 was referred by the Senate to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 20 September 2011. However, on 16 September 2011, the Committee agreed to seek an extension of the reporting date to 3 November. The Committee to date has received 27 submissions for this inquiry and these submissions have been published and are available on the committee's website, For further information the Proof Committee Hansard transcript is available to download: http://www.aph.gov.au/Senate/committee/legcon_ctte/native_title_three/hearings/Proof_transcript.pdf

Western Australia Conservation Legislation Amendment Bill 2010

The Western Australia Conservation Legislation Amendment Bill 2010, which was introduced into Parliament on 17 November 2010, aims to fulfill long standing aspirations of Aboriginal people to be involved in the management of land, and to be able to carry out traditional activities 'on country' on areas which are in conservation reserves.

The Bill has two purposes:

- It proposes amendments to the Conservation and Land Management Act 1984 (CALM Act) to enable [joint management](#) of lands and waters between the Department of Environment and Conservation (DEC) and other landowners, or those with a vested or other interest in the land, including Aboriginal people.
- It proposes amendments to the CALM Act and the Wildlife Conservation Act 1950 that will enable Aboriginal people to undertake [customary activities](#) on reserves and other land.

The Bill provides for increased opportunities for Aboriginal people to be actively involved in, and contribute their knowledge to, the management of land. It also allows for Aboriginal people to undertake customary activities on reserves and other land, including for medicinal, ceremonial and artistic purposes.

The Conservation Legislation Amendment Bill 2010 is available on the [Western Australian Parliament's website](#). A copy of the explanatory memorandum for the Bill, as well as a marked-up version of the CALM Act showing the proposed amendments, are also available from Parliament's website. Download the fact sheets to find out more about [joint management](#) and [Aboriginal customary activities](#) provided for by the Bill. For more information on the Conservation Legislation Amendment Bill 2010 contact DEC on (08) 9334 0362 or info@dec.wa.gov.au.

4. Research Funding Opportunity

National Climate Change Adaptation Research Facility Research Call

The National Climate Change Adaptation Research Facility has opened a research call around the contribution of Indigenous communities to Australia's adaptation response to climate change, the resilience and vulnerability of Indigenous communities to climate change, and the knowledge needs of Indigenous communities for effective adaptation. For more information please go here:

<http://www.nccarf.edu.au/node/783>

5. Indigenous Land Use Agreements

- In September 2011, **5** ILUAs were registered with the National Native Title Tribunal (NNTT). See table below for more details.
- The [Native Title Research Unit](#) maintains an [ILUA Summary](#) which provides hyperlinks to information on the NNTT and ATNS websites.
- For more information about ILUAs, see the [NNTT Website: ILUAs](#)
- Further information about specific ILUAs is available in the [Agreements, Treaties and Negotiated Settlements \(ATNS\) Database](#).

Date	NNTT File No.	Name	Type	State/Territory	Subject Matter
05/09/2011	QI2011/009	Connors River Dam and Pipelines Project ILUA	AA	QLD	Pipeline
05/09/2011	QI2011/010	Santos Petronas Murribinbi GLNG ILUA	AA	QLD	Petroleum / Gas Pipeline
19/09/2011	QI2011/011	Hancock Alpha Coal Project - Wangan Jagalingou ILUA	AA	QLD	Extinguishment Infrastructure
30/09/2011	QI2011/012	Herberton Tin Fields ILUA	AA	QLD	Co-management
30/09/2011	QI2011/018	Munburra ILUA	AA	QLD	Co-management Government Mining

6. Native Title Determinations

- In September 2011, **2** native title determinations were handed down by the Federal Court of Australia. See table below for further details including **1** native title determination handed down in late August.
- The [Native Title Research Unit](#) maintains a [Determinations Summary](#) which provides hyperlinks to determination information on the Austlii, NNTT and ATNS websites.
- Also see the [NNTT Website: Determinations](#)
- The [Agreements, Treaties and Negotiated Settlements \(ATNS\) Database](#) provides information about native title consent determinations and some litigated determinations.

Date	Short Name	Case Name	State/Territory	Outcome	Legal Process
31/08/2011	Wanyurr Majay People	Annie Wonga & Ors on behalf of the Wanyurr Majay People v State of Queensland (unreported, FCA, 31 August 2011, Dowsett J)	QLD	Native title exists in the entire determination area	Consent determination
01/09/2011	Djiru People #2	Dawn Hart & Ors on behalf of the Djiru People #2 v State of Queensland (unreported, FCA, 1 September 2011, Dowsett J)	QLD	Native title exists in the entire determination area	Consent determination
01/09/2011	Djiru People #3	Dawn Hart & Ors on behalf of the Djiru People #3 v State of Queensland (unreported, FCA, 1 September 2011, Dowsett J)	QLD	Native title exists in the entire determination area	Consent determination (conditional)

7. Registered Native Title Bodies Corporate

The [Native Title Research Unit](#) maintains a [Registered Native Title Bodies Corporate Summary document](#) which provides details about RNTBCs in each state/territory including the RNTBC name, RNTBC type (agent or trustee) and relevant native title determination information. Additional information about the RNTBC can be accessed through hyperlinks to corporation information on the [Office of the Registrar of Indigenous Corporations \(ORIC\) website](#); case law on the [Austlii website](#); and native title determination information on the [NNTT](#) and [ATNS](#) websites.

8. Public Notices

The *Native Title Act 1993* (Cth) requires that native title parties and the public must be notified of:

- proposed grants of mining leases and claims;
- proposed grants of exploration tenements;
- proposed addition of excluded land in exploration permits;
- proposed grant of authority to prospect; and
- proposed mineral development licences.

The public notice must occur in both:

- a newspaper that circulates generally throughout the area to which the notification relates
- a relevant special interest publication that:
 - caters mainly or exclusively for the interests of Aboriginal peoples or Torres Strait Islanders;
 - is published at least once a month; and
 - circulates in the geographical area of the proposed activities.

To access the most recent public notices visit the [NNTT website](#) or the [Koori Mail website](#).

9. Native Title in the News

The [Native Title Research Unit](#) publishes [Native Title in the News](#) which contains summaries of newspaper articles relevant to native title.

10. Native Title Publications, Media Releases and Radio Broadcasts

1. Journal Article:

Mansfield, Justice J, 'The 2009 amendments to the Native Title Act 1993: The extended powers of the Federal Court', *Public Law Review* (Volume 22 Part 3), September 2011.

Abstract

This article considers the significance of amendments to ss 87 and 87A of the *Native Title Act 1993* (Cth) introduced by the *Native Title Amendment Act 2009* (Cth). It addresses the extent to which those amendments enable the Federal Court of Australia to make orders by consent reflecting the agreement between parties to claims made in relation to native title under s 61 of the *Native Title Act*, which may extend beyond the determination of native title rights and interests. It suggests that the amendments provide a significant opportunity to parties involved in such claims to reach fair and effective resolution of such claims efficiently and in accordance with the purpose and objects of the Act. It also considers the extent to which the procedures now introduced may facilitate such resolution in lieu of the procedures available under Pt 2 Div 3 by the use of Indigenous land use agreements.

To purchase this article, complete the [Individual Article Sale](#) order form and email it to tranz.journal.orders@thomsonreuters.com.

2. Reports and Discussion Papers:

- Western Australian Auditor General's Report, *Ensuring Compliance with Conditions on Mining*, Report 8, September 2011. http://www.audit.wa.gov.au/reports/pdfreports/report2011_08.pdf

- Department of Regional Development and Lands, 'Rangelands Tenure Options', September 2011.
 - <http://www.rdl.wa.gov.au/newsandevents/Pages/SummaryRangelandstenureOptions.aspx>
 - This paper responds to the issues raised in submissions to the [Rangelands Tenure Options Discussion Paper](#) and outlines the next steps that the Government will undertake.
To view the response paper click on the following links:
[Response to the Rangelands Tenure Options \(PDF\)](#)
[Response to the Rangelands Tenure Options \(Word\)](#)

The Department also released an information sheet titled Land Tenure Options being progression and the implications of the *Native Title Act 1993*. This information sheet provides an overview of the six broad changes to the *Land Administration Act 1997* the Hon Minister Brendon Grylls, intends to progress under the State Government's Rangelands Reform. For more information please email rangelandsreform@rdl.wa.gov.au or telephone (08) 6552 4522.

To view the information sheet, click on the links below.

- [Tenure Options Information Sheet \(PDF\)](#)
[Tenure Options Information Sheet \(Word\)](#)
- Dr Fadwa Al-Yaman and Dr Daryl Higgins, *What works to overcome Indigenous disadvantage: key learnings and gaps in the evidence*, Australian Institute of Health and Welfare Studies, 2011.
http://www.aihw.gov.au/closingthegap/documents/annual_papers/what_works_to_overcome_disadvantage.pdf
- Attorney-General's Department, *Consolidation of Commonwealth anti-discrimination laws*, Discussion paper, 2011.
On 22 September 2011, the Attorney-General and Minister for Finance and Deregulation launched a public discussion paper to seek community views on consolidating Commonwealth anti-discrimination law. The project to consolidate existing Commonwealth anti-discrimination law into a single Act is a key component of Australia's Human Rights Framework. More information is available from the Attorney-General's Department website:
http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandanti-discrimination_AustraliasHumanRightsFramework_ConsolidationofCommonwealthAnti-DiscriminationLaws

3. Newsletters and Magazines:

Yamatji Marlpa Aboriginal Corporation

- [YMAC News](#), Issue 15, YMAC, September 2011

Central Desert Native Title Services:

- [Ngururpa: Return to Country](#) September 2011

Native Title Services Victoria:

- [Newsletter](#), Issue 21, September 2011

Altman, Jon. 'Party politics set back native title rights', *Tracker*, September 13, 2011

To access the article click [here](#)

4. Media releases:

Yamatji Marlpa Aboriginal Corporation.

- 26 September 2011 - [NNTT finds Wajarri heritage is more important than money](#)
Watch GWN's coverage of the story here: <http://au.gwn7.yahoo.com/w1/video/-/watch/26753825/native-title-tribunal-vetoes-mine/>

Office of the Registrar of Indigenous Corporations (ORIC)

- 1 September 2011 - [Corporation handed back to Nyiyaparli members](#)
- 5 September 2011 - [Dunghutti Elders Council placed under special administration](#)

Queensland South Native Title Services

- 5 September 2011 - [Client relations unit launched](#)
University of Adelaide
- 6 September 2011 – [Federal recognition for Adelaide's native title expertise](#)

5. Radio Broadcast:

- Newslines Radio: 'Native title and mining opportunities'

Broadcast date: 12–18 September 2011

Duration: 12 minutes

Presenter: Tracy Williams

Content: The program looks at how communities are making the most of opportunities being created by native title. Talent: Glen Kelly, South West Aboriginal Land and Sea Council, WA, Parry Agius, South Australian Native Title Services, SA Mark Woodhouse, Offshore Marine Services Alliance, WA Elaine Samardin, CST Mining Group, Lady Annie Operations, Mount Isa, QLD.

To read the transcript click [here](#)

6. DVD:

- *The Caroline Tennant-Kelly Ethnographic Collection: Fieldwork Accounts of Aboriginal Culture in the 1930s* [DVD] David Trigger, Kim De Wilde, Tony Jefferies, Charmaine Jones and Michael Williams, The University of Queensland, 2011.

A team of anthropologists at UQ - Prof. David Trigger, Kim de Rijke, Tony Jefferies and Charmaine Jones - and former Director of the Aboriginal and Torres Strait Island Studies Michael Williams recently produced a DVD which contains the digitised ethno-graphic records of Caroline Tennant-Kelly. These records from the 1930s were recently recovered Kim de Rijke and Tony Jefferies, and they have now been digitised and indexed for the benefit of native title researchers and Aboriginal communities.

Further information is available on the University of Queensland [website](#)

11. Seminars

Passive Resistance and its application to native title claims'

Presenter: Dr Debbie Fletcher

Date: Friday 28 October 9.30am

Venue: Theatrette, Sir Roland Wilson Building, Bld #120, McCoy Circuit, Canberra

Summary:

The Bennell native title decision provided evidence that the Noongar people have sustained a relationship with their traditional lands since sovereignty. I argue that passive resistance strategies were employed by Noongar people to enable them to maintain an ongoing association with their traditional lands in the face of successive policies that were designed to undermine this association. My research demonstrated that a re-reading of historical information can elucidate Aboriginal resistance, which may have direct relevance to native title claims, particularly in settled areas.

The evidence produced to substantiate a land claim or native title claim has often challenged traditional interpretations of history and resulted in a re-interpretation of the impact of British settlement upon Aboriginal people. I will show how the use of James Scott's theory of passive resistance, with its identification of the 'weapons' available to the 'weak' provides a framework to identify a previously unexplored aspect of Australian Aboriginal history. I suggest that evidence of passive resistance could prove valuable in other native title claims, particularly those in more settled regions.

Audio recording of seminar, 'Anthropology, Pure and Profane: The politics of applied research in Aboriginal Australia' by Professor David Trigger.

David Trigger's seminar, "Anthropology, Pure and Profane: The politics of applied research in Aboriginal Australia", delivered at ANU on 16 September 2011, is now available on the Centre for Native Title Anthropology (CNTA) website. Please visit the CNTA [homepage](#) and read down the page to "CNTA News and Events". A note to listeners – Nicolas Peterson's introduction to Professor Trigger's seminar was poorly recorded and so the first minute or so of the recording is inaudible. Please skip forward a minute or so and you'll hear David loud and clear.

12. Training and Professional Development Opportunities

Native Title and Cultural Heritage Compliance for Infrastructure Projects, QLD

Dates: Monday 17th October at 12:00pm – 5:00pm

Tuesday 18th October at 8:00am – 12:00pm

Venue: Barcaldine, QLD venue confirmed on receipt of registration.

This program is about 'Projects, Land Dealings and Operational Activities' and builds on the [Institute of Public Works Engineering Australia](#) popular 2004/05 program on Indigenous Cultural Heritage and Native Title Future Act Compliance for Public Works Projects. As well as providing a refresher on the compliance knowledge required to manage native title and cultural heritage risks to infrastructure projects and land tenure dealings, this updated course offers additional strategic learning specific to regional challenges, government policy developments and in-house compliance systems

For more information on program structure or to register click [here](#).

Native Title Anthropology Courses and Workshops

The Centre for Native Title Anthropology website provides information about upcoming courses and workshops offered by the recipients of the Attorney-General's 2011-2012 Native Title Anthropology Grants. Click [here](#) for more information.

Native Title Anthropology Research Writing Placements

Applications are now open for the 2011-12 CNTA Native Title Anthropology Research Writing Placements (RWP). The RWPs offer opportunities for early-career and consultant anthropologists to develop research expertise and make a unique contribution to native title anthropology scholarship in a supportive academic environment. They are available for any consecutive 10 week period between 28 November 2011 and 1 June 2012.

Location:	Canberra, ACT
Term of Contract:	Fixed Term of 10 weeks
Grade:	ANU Officer Grade 6 (Research)
Salary Package:	\$64,284 - \$67,364 pa plus 9% superannuation
Closing Date:	24 October 2011

Successful applicants will be eligible to receive up to \$2,500 for travel and accommodation expenses in order to support temporary relocation to Canberra. Office space, computer and email services, and full access to online library resources will be provided. It is a requirement of this position to relocate to Canberra for at least 8 of the 10 weeks.

Enquiries:

Dr Pamela McGrath

T: (02) 6125 5859

E: pam.mcgrath@anu.edu.au

For more information about the position or to make an application, please see the position advertisement on the ANU HR webpage at <http://jobs.anu.edu.au/PositionDetail.aspx?p=2308>

University of Adelaide Native Title Anthropology

The University of Adelaide is a recipient of funding from the Attorney-General's Department 2011-2012 Native Title Anthropology Grants program. Over the next 12 months the University's anthropology department will use more than \$250,000 from the AGD to train more anthropologists in native title and look at developing a national curriculum. The grant money will be used to establish a physical and virtual hub for native title anthropology at the University of Adelaide, with study leave fellowships awarded to anthropologists from around Australia to mentor, develop teaching materials, write papers and exchange knowledge on native title issues. More information is available on the University of Adelaide [website](#).

Aurora Project

The Aurora Project provides a range of training and professional development opportunities for legal, anthropology and other research staff, field and community liaison officers, management and corporate services staff of native title representative bodies (NTRBs). Some programs may also be useful for representatives from prescribed bodies corporate (PBCs). Programs are funded by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). There is no cost to NTRB staff and PBC representatives to attend, although participants' organisations are responsible for funding travel, accommodation and associated expenses. See [the Aurora Project: 2011 Program Calendar](#) for further information.

AIATSIS acknowledges the funding support of the Native Title and Leadership Branch of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)